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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

PHILIP S. CRANER,

Petitioner,

v.

APPELLATE DIVISION OF THE
SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

A142748

(San Francisco City and County
Super. Ct. No. 12005198

Appellate Division
Writ No. APP-14-007757)

BY THE COURT:¹

Philip Craner seeks a writ of mandate to compel the dismissal of misdemeanor charges against him, arguing the 19-month delay between the issuance of an arrest warrant on the criminal complaint and the date of his arraignment violated his right to a speedy trial under the Sixth Amendment to the United States Constitution. The People maintain the trial court correctly pronounced the delay in this case “not that lengthy,” and correctly assigned fault for the delay and any resulting prejudice to Craner himself. While we express no opinion as to the ultimate resolution of Craner’s motion, we are not

¹ Before Kline, P.J., Richman, J., and Stewart, J.

satisfied the trial court exercised its discretion in conformity with the spirit of the law. Accordingly, we shall issue a peremptory writ of mandate directing the appellate division to vacate its July 29, 2014 order denying Craner’s writ petition, and to enter a new and different order directing the reconsideration of his speedy trial claim in light of our decision.²

BACKGROUND

Craner was arrested, cited, briefly jailed, and released on February 23, 2012. His citation instructed him to appear at the San Francisco Hall of Justice on March 9, 2012, at 8:30 a.m. Instead, Craner says, he called the Hall of Justice on March 8, 2012, and was told no complaint had yet been filed. He did not appear as instructed on March 9, 2012. A complaint was filed that morning at 9:41, and an arraignment was held. Because Craner was not present, the trial court issued a bench warrant for his arrest.

To this day, the People have taken no steps to serve the warrant or otherwise inform Craner of its issuance, though he lived and received mail continuously at the Pleasanton address noted on the face of his 2012 citation for 17 months after his arrest. His father still lives there, and confirms that no letter, no phone call, and no visitor has ever come to announce the outstanding warrant. In July 2013, Craner moved to Castro Valley, filing a change-of-address notice with the U.S. Postal Service. He learned about the outstanding warrant a month after he moved, when police stopped the acquaintance to whom he had sold his car. Once that acquaintance notified him that charges were pending, Craner retained counsel and contacted the court to schedule his own arraignment. On September 19, 2013, he appeared with his attorney and requested a date

² A peremptory writ in the first instance is appropriate in this case. Our Supreme Court has instructed “that a peremptory writ of mandate or prohibition [may] not issue in the first instance unless the parties adversely affected by the writ have received notice, from the petitioner or from the court, that the issuance of such a writ in the first instance is being sought or considered. In addition, an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected.” (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) Both requirements are met here.

for a motion to dismiss the complaint because the time between its issuance and his arraignment (18 months and two weeks) violated his federal speedy trial right. This motion was denied. The appellate division of the superior court granted Craner's petition for a writ of mandate, and his motion to dismiss was reheard, and denied again. The appellate division denied Craner's second petition for writ of mandate on July 28, 2014.

Craner filed the instant writ petition seeking review of the appellate division's decision. (Code Civ. Proc., § 904.3 [appellate court may consider writ petition to review denial of writ by superior court appellate division in a misdemeanor case]; *Serna v. Superior Court* (1985) 40 Cal.3d 239, 263-264 (*Serna*) [writ review available when defendant alleges violation of Sixth Amendment speedy trial right in misdemeanor case].) Our review is limited to deciding whether the lower court abused its discretion. (*Serna*, at pp. 245-246, 263-264; *Ogle v. Superior Court* (1992) 4 Cal.App.4th 1007, 1014 (*Ogle*).) The trial court's discretion, however, is not unlimited and must be “ ‘exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . .’ ” (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 738, quoting *Bailey v. Taaffe* (1866) 29 Cal. 422, 424.)

DISCUSSION

The Sixth Amendment promises, “In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial.” The federal speedy trial right is distinct from that secured by the state Constitution, and is analyzed differently. It applies to prosecutions in state court via the Fourteenth Amendment. (See Cal. Const., art. I, § 15; *People v. Williams* (2013) 58 Cal.4th 197, 232 (*Williams*); *Serna, supra*, 40 Cal.3d at pp. 249-250.) The Sixth Amendment speedy trial right “ ‘is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself.’ [Citation.]” (*Williams*, at p. 232.)

In *Barker v. Wingo* (1972) 407 U.S. 514, 530 (*Barker*), the United States Supreme Court announced a balancing test for evaluating speedy trial claims under the Sixth

Amendment. The trial court must consider: “Length of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.” (*Barker*, at p. 530.) Twenty years after *Barker*, the court restated these factors like this: “whether [the] delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay’s result.” (*Doggett v. United States* (1992) 505 U.S. 647, 651 (*Doggett*).)

“Unlike the standard for showing a speedy trial violation under the state Constitution, which requires a showing of actual prejudice at the outset [citation], a federal speedy trial analysis under *Barker* is triggered by a showing of presumptive prejudice based on the length of the delay. [Citation.]” (*Dews v. Superior Court* (2014) 223 Cal.App.4th 660, 668.) We are persuaded, as the trial court evidently was, that the 17-month delay in this case raised a presumption of prejudice, requiring examination of the other three factors. (See *Barker, supra*, 407 U.S. at p. 530.) “Statutes of limitation reflect a legislative construction of the speedy trial guarantee.” (*Serna, supra*, 40 Cal.3d at p. 252.) As our Supreme Court has explained: “the one-year period of the generally applicable misdemeanor statute of limitations remains as a touchstone for measuring the reasonableness of a delay between complaint and arrest. If a delay of one year in charging a misdemeanor defendant is so unreasonable that prosecution is statutorily barred, it follows that a delay of similar duration must be considered unreasonable and presumptively prejudicial within the contemplation of the Sixth Amendment when, although a complaint has been filed, the defendant is not arrested and arraigned on the complaint for that period.” (*Id.* at p. 254.)

Nonetheless, “such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria,” though “it is part of the mix of relevant facts, and its importance increases with the length of delay.” (*Doggett, supra*, 505 U.S. at p. 656.) “[A]s the government’s fault moves up the scale from indifference and negligence to deliberate action, the length of delay (needed to make out implied

prejudice) reduces. Where the government (*i.e.* the People) presents some excuse or justification for the delay, courts will tolerate longer periods of delay. . . .” (*Leaututufu v. Superior Court* (2011) 202 Cal.App.4th Supp. 1, 9.) No single *Barker* factor is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.” (*Barker, supra*, 407 U.S. at p. 533.)

Here, Craner asserts, the trial court assigned too much weight to his decision not to appear on March 9, 2012, using that fact, effectively, to decide all the *Barker* factors against him. According to Craner, this was improper. We agree: because many speedy trial claims develop out of a delay between the filing of the complaint and the defendant’s first appearance in court, such claims commonly arise in situations when a defendant has failed to appear at his arraignment. But that does not end the matter. As Craner points out, the court must still determine whether the defendant’s failure to appear was willful, and why, once he failed to appear, the police took so long to hail him into court.

We agree with the People that Craner’s failure to appear was willful for purposes of the *Barker* inquiry. Having promised to come to court at 8:30 a.m. on March 9, 2012, following his arrest and citation, Craner was not entitled to decide for himself that there was no need to do so, based upon the limited information he says he solicited in a phone call to the court on March 8, 2012. Viewed in this light, his failure to appear was certainly a deliberate choice. (*Compare Ogle, supra*, 4 Cal.App.4th at p. 1022 [remanding for the trial court to consider defendant’s claim that an alcoholic blackout obliterated his memory of being arrested and cited].)

That said, we are not persuaded that Craner’s failure to present himself in court on March 9, 2012, warrants attributing “all” or “the great bulk of the delay” to him, as the trial court expressly did. *After* he failed to appear, the People failed for 17 months to take the smallest step even to notify Craner that a warrant had issued for his arrest, when “[o]nly a minimal effort would have been required to arrest [him] at the address shown

on the citation.” (*Ogle, supra*, 4 Cal.App.4th at p. 1021.) They tender no excuse for this lapse, and the trial court demanded none. But our Supreme Court holds the People to a higher standard than this, noting, “it would be anomalous [i]n light of the congruent objectives of the speedy trial guarantee and the legislatively adopted one-year period of limitation that has governed misdemeanors for over a century if, after a decision has been made to prosecute an offense as a misdemeanor, the mere filing of a misdemeanor complaint without further action by the state for a period in excess of one year were not presumed to be a violation of the right to speedy trial, *and the People compelled to justify the delay.*” (*Serna, supra*, 40 Cal.3d at p. 253, italics added.)

And, in *Ogle*, on similar facts, the Fifth District reached the opposite conclusion from that the trial court reached here, holding, “Because the . . . authorities failed to make any effort to arrest Ogle at his known address after Ogle failed to appear, the two-year delay was not ‘attributable to the defendant’ within the meaning of *Barker*[.]” (*Ogle, supra*, 4 Cal.App.4th at p. 1019.)

Further, in this case, it was Craner who contacted the court to initiate his own arraignment in 2014, once he learned of the outstanding warrant by happenstance. For all we know, he would still be at large now, three and a half years after his arrest, if the matter had been left to the People. These facts are not insignificant, and must also be weighed on remand in the trial court’s “difficult and sensitive balancing process,” (*Barker, supra*, 407 U.S. at p. 533) for, as Craner points out, the ultimate responsibility for bringing a defendant to justice lies with the authorities, and not with the defendant.

DISPOSITION

Let a peremptory writ of mandate issue directing the superior court appellate division to vacate its July 29, 2014 order denying petitioner’s petition for writ of mandate, and instead to issue a new and different order granting the petition and directing the superior court to (1) vacate its order denying petitioner’s motion to dismiss; (2) conduct a new hearing on petitioner’s federal speedy trial claim; and (3) expressly apply the balancing test set forth in *Barker, supra*, 407 U.S. at page 530, giving appropriate consideration to the People’s failure to contact and arrest Craner after the bench warrant

issued, and Craner's voluntary surrender. To prevent further delays in the superior court proceedings, this decision shall be final as to this court three days after its filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

Dissenting opinion of Richman, J.

I do not agree, and would deny the writ. I read the record as demonstrating a thoughtful decision by a conscientious trial judge who, following an argument that manifested a complete understanding of the record and the applicable law, cited that law, and concluded as follows: “Mr. Craner, by failing to appear at arraignment, has waived his right to a speedy trial. But even if he hasn’t, because that is an uncertain issue of California law, I am going to deny the motion by weighing the *Barker v. Wingo* factors. . . .” That, to me, hardly manifests an abuse of discretion, and I cannot sign on to an order compelling the judge to “give appropriate consideration” to one fact out of many.

Richman, J.